

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

DAVID L. BERRY, as Trustee, etc. et al.,

Plaintiffs and Appellants,

v.

MADERA HOTEL LLC,

Defendant;

KANWAL J. SINGH,

Defendant, Intervener and Respondent.

F076157

(Super. Ct. No. MCV063168)

OPINION

APPEAL from orders of the Superior Court of Madera County. Michael J. Jurkovich, Judge.

Wanger Jones Helsley, Timothy Jones, Kurt F. Vote and Marisa L. Balch for Plaintiffs and Appellants.

Doerksen Taylor Stokes, Charles L. Doerksen and Travis R. Stokes for Defendants, Intervener and Respondent.

-ooOoo-

In this appeal, plaintiffs David L. Berry and Patricia Rea Berry, trustees of the David and Patricia Berry Living Trust (Berry Trust), challenge the trial court orders awarding defendant-intervener Kanwal J. Singh costs (\$8,995.38) and attorney fees (\$232,079). The orders denying Berry Trust's motion to tax costs and granting Dr. Singh's motion for attorney fees were entered on June 9, 2017, in Madera County Superior Court case MCV063168, which the parties have referred to as the Loan Case.

A judgment of dismissal in favor of defendant Madera Hotel LLC and defendant-intervener Dr. Singh was entered in the Loan Case on the grounds Berry Trust's claims were barred by the statute of limitations. In case No. F075618, we reversed the judgment of dismissal and remanded for further proceedings. Accordingly, Dr. Singh no longer is the prevailing party in the Loan Case and the award of costs and attorney fees to him as the prevailing party must be vacated. (See *Salazar v. Thomas* (2015) 236 Cal.App.4th 467, 482 [judgment in favor of defendants reversed; trial court directed to vacate its award of attorney fees to defendants].)

DISPOSITION

The trial court is directed to vacate the June 9, 2017, order denying appellants' motion to tax cost and the June 9, 2017, order granting motion to fix attorneys' fees. Appellants shall recover their costs on appeal.

FRANSON, J.

WE CONCUR:

LEVY, Acting P.J.

SNAUFFER, J.